Supreme Court, U.S.
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No. (1)

In The

# Supreme Court of the United States

MICHAEL J. DEE

Petitioner,

v.

STATE OF MAINE

Respondent.

On Petition For A Writ Of Certiorari
To The Maine Supreme Judicial Court

## PETITION FOR WRIT OF CERTIORARI

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## Questions Presented for Review

Did the enforcement and the threatened enforcement of the Maine marijuana laws "affect" petitioner's fundamental rights to liberty and property secured, from unreasonable seizure, by the Fourth and Fifth Amendments of the United States Constitution?

Does the Fourth and Fifth Amendments permit the Maine Supreme Judicial Court the authority to review the constitutionality of laws that criminalize the private growing and possession of marijuana by rational review?

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## OPINION BELOW

The Maine Supreme Judicial Court opinion that the petitioner ask this Court to review is *Dee v State of Maine,* Docket No. Cum.-07-405, Decision No. Mem. 07-208.

The Cumberland County Superior Court opinion is *Dee v State of Maine,* Docket No. CV 06-707. Both opinions are reproduced, along with the petitioner's complaint in the superior court and the relevant authorities, in the Appendix.

## JURISDICTIONAL BASIS

This petition asks the Court to review the December 13, 2007 opinion and judgment of the Maine Supreme Judicial Court. Petition for rehearing was denied February 15, 2008.

The Maine Supreme Judicial Court affirmed the decision of the Superior court, which dismissed the petitioner's claims under Title 14 M.R.S.A § 5954 because it held the enforcement of the marijuana laws did not affect petitioners rights to liberty and property secured by the Fourth and Fifth Amendment.

On May 6th, 2008, this Court's Clerk granted the Petitioner 60 days to file a corrected petition.

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgments or orders in question is 28 U.S.C. 1257(a).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

### Constitution of the United States.

Amendment IV. "The right of the people to be secure in their Persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." (App. 13)

Amendment V. "No person shall be deprived of life, liberty, or property, without due process of law." (App. 13)

### Maine Statutes

Title 14M.R.S.A § 5954. Construction and validity of statutes. Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Title 22 M.R.S.A § 2383. Possession

1. Marijuana. Except as provided in section 2383-B, subsection 5, a person may not possess marijuana.

A. A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than $350 and not more than $600 must be adjudged, none of which may be suspended.

B. A person who possesses a usable amount of

marijuana after having previously violated this subsection within a 6-year period commits a civil violation for which a fine of $550 must be adjudged, none of which may be suspended.

Title 17-A M.R.S.A § 1117. Cultivating marijuana

1. A person is guilty of cultivating marijuana if:

A. The person intentionally or knowingly grows or cultivates marijuana. Violation of this paragraph is a Class E crime; [2001, c. 383, §148 (NEW); 2001, c. 383, §156 (AFF).]

B. The person violates paragraph A and the number of marijuana plants is:

(1) Five hundred or more. Violation of this subparagraph is a Class B crime;

(2) One hundred or more but fewer than 500. Violation of this subparagraph is a Class C crime;

(3) More than 5 but fewer than 100. Violation of this subparagraph is a Class D crime; or

(4) Five or fewer. Violation of this subparagraph is a Class E crime.

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## STATEMENT OF THE CASE

This Petition asks the Court to review the Maine Supreme Judicial Court's decision affirming the Superior court's dismissal of petitioner's Declaratory Judgment complaint.

The State of Maine Declaratory Judgment statute, Title 14 M.R.S.A. § 5954, allows any person whose rights are affected by a statute, presenting a justiciable controversy, may have determine any

question of construction or validity arising under the statute, and obtain a declaration of rights.

Petitioner has several summons but one civil conviction in Maine for violating Title 22 M.R.S.A. § 2383 (1) and is threatened with enforcement of Title 17-A M.R.S.A. § 1117. (App. 4; *Cmplt.* ¶¶ 6, 7, at App. 13.)

The Maine Declaratory Judgment complaint was filed in Cumberland County Superior Court, State of Maine on December 15, 2006. (App. 12-16) Petitioner claimed the marijuana laws, "Title 22 M.R.S.A. § 2383(1) and Title 17-A M.R.S.A. § 1117 (2)(D) are unjustified therefore unreasonable and contravenes the plaintiff's right to be secure in his person, his home, his papers and in his effects from unreasonable searches and seizures guaranteed by Amendment IV of the Constitution of the United States." (*Cmplt.* ¶ 12, App. 14.) Petitioner claimed "Title 22 M.R.S.A. § 2383(1) and Title 17-A M.R.S.A. § 1117(2)(D) are unjustified, unreasonable and unnecessary therefore has deprived and continues to threaten to deprive the plaintiff of his liberty and property without "due process of law" secured by Amendment V to the Constitution of the United States." (*Cmplt.* ¶15, App.15.)

The Maine court of first instance claims Dee is "Contending that he has a fundamental right to possess marijuana and that Maine's laws violate his constitutional rights, particularly his due process rights and his right to be free from unreasonable searches and seizures." (App. 3.) The Maine court of first instance concluded "Simply put, usage of marijuana has not been recognizes as a fundamental

constitutional right. Dee's challenge, therefore, is subjected only to rational review" The "legislature had a rational basis for enacting them, and they do not encroach upon any fundamental right." (App. 7)

In his briefs to the Maine Supreme Judicial Court, the federal question, rights to liberty and property secured by the Fourth and Fifth Amendments, were raised in the Statement of Issues.

The Maine Supreme Judicial Court affirmed the Maine Superior Court decision by writing "The superior Courts judgment upholding the constitutionality of these laws in the face of Dee's challenge was soundly based in state and federal precedent cited in the Superior Court's judgment." (App. 1)

The Court below has interpreted Petitioner's declaratory judgment action to mean only one thing. Petitioner is "contending" marijuana is a constitutional right on the same level as the Fourth and Fifth Amendments of the Constitution of the United States.

The Courts below deny the petitioner's rights to liberty and property have been affected prejudicially by the enforcement of the marijuana laws because marijuana is not a fundamental right.

The Maine Supreme Judicial Court is claiming that the marijuana laws are rational regulation of the petitioner's civil rights to liberty and to property secured by the Fourth and Fifth Amendments .

## REASONS FOR GRANTING THE WRIT
Rule 10(c)

The Maine Supreme Judicial Court has decided an important question of federal law that has not been, but should be, settled by this Court.

Does the Fourth and Fifth Amendment of the United States Constitution permit the Maine Supreme Judicial Court the authority to review the constitutionality of laws that criminalize the private growing and possession of marijuana by rational review?

The Maine Supreme Judicial Court has decided an important federal question in a way that conflicts with relevant decisions of this Court. Regulation of individual fundamental rights to liberty and to property, by criminal laws, must be reasonable not rational.

## THE DECISIONS BELOW CONFLICTS WITH RELEVANT DECISIONS Of THIS COURT

This Court has said in *Zwickler v. Koota* "state courts also have the solemn responsibility, equally with the federal courts, 'to guard, enforce, and protect every right granted or secured by the Constitution of the United States.'" *Zwickler v. Koota*, 389 U.S. 241, 248 (1967) citing *Robb v. Connolly* 111 U.S. 624, 637 (1884).

This Court said, the "Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from

unreasonable governmental intrusion." *Silverman* v *United States,* 365 U.S. 505, 511 (1961).

The Maine Supreme Judicial Court failed in its "solemn responsibility to guard, enforce, and protect" petitioner's person, house, papers, and effects, ie liberty and property, from unreasonable searches and seizure secured by the Fourth Amendment of the United States Constitution.

In 1878, this Court said: "Rights to life, liberty, and the pursuit of happiness are equivalent to the rights of life, liberty, and property. These are the fundamental rights which can only be taken away by due process of law." *Slaughter-House Cases,* 83 U.S.(16 Wall) 36, 116 (1873).

The Courts below did not evaluate the search or seizure of petitioner's person and property for violating the marijuana laws under traditional standards of reasonableness as required by due process of law.

The Courts below are saying it is rational to search and seize petitioner's person, house, papers, and effects for violating the marijuana laws because marijuana is not a fundamental right.

## A. THE PETITIONER HAD AND HAS A CONSTITUTIONALLY PROTECTED INTEREST IN LIBERTY

This Court has declared "liberty is the freedom from unreasonable searches and seizures". *Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U.S. 833, 848 (1992). Liberty is freedom from physical restraint.

This court stated in *Terry v. Ohio,* "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio,* 392 U.S. 1, 19 n. 16 (1968).

Many times in the State of Maine the petitioner's person was seized by law enforcement officials to receive a summons to appear in court, for possessing a useable amount of marijuana.(App. 4)

This Court has "recognized that, whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person." *Id., at* 16.

This court has declared in *Graham v. Connor* the "seizure of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." The "Fourth Amendment provides an explicit textual source of constitutional protection against "physically intrusive governmental conduct" and "must be the guide for analyzing these claims." *Graham v. Connor,* 490 U.S. 386, 395 (1989).

## B. THE PETITIONER HAD AND HAS A CONSTITUTIONALLY PROTECTED INTEREST IN PROPERTY

Marijuana is property. Petitioner's property has been seized by the State of Maine on many occasions.

The Congress of the United States has declared that individuals enjoy a fundamental right to own and enjoy property which they claim is enshrined in the United States Constitution. *Cuban Liberty and*

*Democratic Solidarty (LIBERTAD) Act* of 1996 Title 22 U.S.C.-6081.

This court has declared "property rights" are "guaranteed by the Constitution." *Liggett Co. v. Baldridge*, 278 U.S. 105, 111 (1928).

This court has long recognized "that rights in property are basic civil rights." *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972).

This Court held "that seizures of property are subject to Fourth Amendment scrutiny." *Soldal v. Cook County*, 506 U.S. 56, 68 (1992). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

This Court said "It is the governmental power of self-protection and permits reasonable regulation of rights and property in particulars essential to the preservation of the community from injury." *Panhandle Eastern Pipeline Co. v. Highway Comm'n*, 294 U.S. 613, 622 (1935).

## C. THE PETITIONER HAD AND HAS A CONSTITUTIONALLY PROTECTED INTEREST IN DUE PROCESS OF LAW

Under due process of law the petitioner has the right to know why it is reasonable to criminalize the private growing of marijuana.

Making an activity a "crime", this Court has said, is an "intrusive regulation and the usual judicial deference to the legislature is inappropriate." *Moore v. East Cleveland*, 431 U.S. 494, 499 ( 1977). This

Court requires "criminal statutes be subjected to the most rigid scrutiny," *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

This Court has stated that the "prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference." *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

This court said the "guaranty of due process ... demands only that the law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia v. New York*, 291 U.S. 502, 525 (1934).

In *Cary v Piphus*, this Court said the due process clause "raises no impenetrable barrier to the taking of a person's possessions, or liberty, or life. Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or *unjustified deprivation of life, liberty,* or property." *Cary v Piphus*, 435 U.S. 247, 259 ( 1978).

And, "*unless justified* as a valid exercise of the police power, the act assailed must be declared unconstitutional because the enforcement thereof has deprived the [Petitioner of his liberty and] property without due process of law." *Liggett Co. v. Baldridge*, 278 U.S. 105, 111; (1928).

This court said the "validity of regulatory measures may be challenged on the ground that they transgress the Constitution, and thereupon it becomes the duty of the court, in the light of the facts

in the case, to determine whether the regulation is reasonable and valid or essentially unreasonable, arbitrary and void." *Norfolk & W.R. Co. v Public Service Commission of West Virginia* 265 U.S. 70, 74 (1924).

State "police power which trenches upon the constitutionally protected freedom ... bears a heavy burden of justification ... and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *Griswold v. Connecticut*, 381 U.S. 479, 497, (1965); *McLaughlin v. Florida*, 379 U.S. 184, 196 (1964).

## CONCLUSION

The petitioner's fundamental rights to liberty and property, secured by the Fourth and Fifth Amendments of the United States Constitution, were "affected" by the enforcement of the marijuana laws.

The Fourth and Fifth Amendments of the United States Constitution does not permit the Maine Supreme Judicial Court the authority to review the constitutionality of laws that criminalize the private growing and possession of marijuana by rational review.

This Court should grant the writ and reverse the judgments below.

Respectfully submitted,

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App. 1

STATE OF MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. Mem 07-208
Docket No.Cum-07-405

MICHAEL J. DEE

V.

STATE OF MAINE

Submitted on Briefs December 3, 2007
Decided December 13, 2007

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD, AND GORMAN, JJ.

MEMORANDUM OF DECISION

Michael J. Dee appeals from that portion of the judgment of the Superior Court (Cumberland County, Crowley, J.) that denied his motion for a judgment on the pleadings, granted the state's motion for judgment on the pleadings and, in effect, upheld the constitutionality of various laws prohibiting the private growing and possession of marijuana. The superior Courts judgment upholding the constitutionality of these laws in the face of Dee's challenge was soundly based in state and federal precedent cited in the Superior Court's judgment.

The entry is:

Judgment affirmed

STATE OF MAINE
SUPERIOR COURT CUMBERLAND

| | | |
|---|---|---|
| Michael Dee<br>Plaintiff | ) | |
| v. | ) | CIVIL ACTION |
| State of Maine<br>Defendant | ) | DOCKET NO: CV-06-707 |

**ORDER ON PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS and MOTIONS FOR SUMMARY JUDGMENT, DEFENDANTS CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS, MOTION TO INJUNCTION and MOTION TO STRIKE**

This matter comes before this Court on Plaintiff's motion for judgment on the pleadings per M. R. Civ. P.12 (c), Defendants cross motion for judgment on the pleadings, Plaintiff's motion for summary judgment per M.R. Civ P. 56(c), Defendants motion to strike Plaintiff's statement of materials facts, and Defendant's motion to enjoin further lawsuits by plaintiff per M.R. Civ. P. 11(a).

## BACKGROUND

Plaintiff Michael Dee ("Dee"), A resident of Windham, Maine, has long been an opponent of Defendant State of Maine's ("the State") laws prohibiting personal possession nd use of marijuana. In Maine, possession of a usable amount of

marijuana is a civil violation. 22 M.R.S.A. 2383(1) 2006. Cultivating marijuana is a crime 17-A M.R.S.A. 1117 (2006). Dee has been found guilty of civil possession several times in the 1990s and in 2000. He filed a complaint for declaratory judgment in this court in December 2006. Contending that he has a fundamental right to possess marijuana and that Maine's laws violate his constitutional rights, particularly his due process rights and his right to be free from unreasonable searches and seizures.

Dee has pursued similar challenges in state and federal courts for approximately twelve years. In Federal court, he filed a declaratory judgment action regarding the marijuana laws in 1995 due to fear of prosecution, which was dismissed for lack of standing, as he had not yet been prosecuted for a violation of those laws. See *Dee v. Reno,* No. 95-CV-29-P-H (D. Me. 1995.)[1] The United States Court of Appeals for the first circuit affirmed the dismissal of the case, and the United States Supreme Court denied certiorari. Dee v. Reno, 519 U.S. 873 (1996). Dee's petition for rehearing was denied . *Dee v. Reno* 519 U.S. 1001 (1996). Dee filed several similar lawsuits in the district court, all of which were dismissed on res judicata grounds.[2] culminating in an order enjoining Dee from filing additional federal

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[1] Dee included a marijuana leaf when he filed his complaint in federal court.

[2] See Dee v. Ketterer, No. 96-CV-274-B (D. Me. 1997); Dee v. Reno, No. 98-cv- 229-P-H (D. Me. 1997);Dee v. U.S., No98-CV-6-P-H (D. Me 1998).

lawsuits without permission of the court.[3] In 1999, Dee began his quest in state court, filing a declaratory judgment action to contest the validity of Maine's law presuming unlawful furnishing of marijuana over a certain quantity, 17- A M.R.S.A. 1106(3)(A), and its laws against possession of the drug. This Court (*Calkins, J.*) dismissed the lawsuit, as Dee was not being prosecuted at the time and had not alleged a violation of his fundamental constitutional rights and the Law Court affirmed the dismissal. Dee v. Attorney General, No. Mem-99-59 (Apr. 30,1999). The following year, Dee "invited" this court (*Delahanty, J.* ) to "amend" those same marijuana laws and the Law Court again affirmed this court's dismissal of that declaratory judgment action as this Court lacks the authority to alter the State's drug laws. *See Dee v. State,* No.Mem-00-132 (Oct.27, 2000).

Also in 2000, Dee received a summons following his demonstration for legalization of marijuana at the State House, during which he was carrying a marijuana plant that police seize. *See Dee v. State,* 2001 Me. Super. LEXIS 14 AT *1. Following a trial in the Maine District Court, Dee was found guilty of civil possession of marijuana, he appealed to this court, arguing that the statute was unconstitutional.[4] *Id.* At 2. This Court (*Atwood, J.*) rejected his arguments and upheld the judgment,

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[3] The order was issued in Dee v. Clinton , No. 98-CV-37-P-H

[4] The District Court had declined to act on Dee's motion to dismissed, in which he argued that the marijuana laws unconstitutionally deprived him of his liberty interest. *Id.* *23

having determined that no authority supported Dee's argument that marijuana use is constitutionally protected. *Id.* at *4. The law Court also upheld the decision, noting that the law does not offend any fundamental rights. *State v. Dee*, No. Mem-01-59 (June 26,2001). That same year, this court (*Crowley, J.*) dismissed another suit brought by Dee following a 1999 demonstration that he had staged on a Portland Street. *Dee v. State*, 2001 Me. Super. LEXIS 59 AT *1. Because that demonstration had not resulted in his arrest or in the seizure of the plant that he was carrying, Dee claimed that the marijuana laws was being arbitrarily enforced. *Id.* This challenge, too, was unsuccessful, and this Court granted the States Motion for judgment on the pleadings because the constitutional challenge did not present a "justiciable controversy," and was barred by res judicata. *Id.* at *2-3 Again, the Law Court affirmed that result. *Dee v. State*, No. Mem-02-1 (Jan. 16, 2002).

In 2003, Dee returned to federal court in attempt to persuade the court to allow him to bring another challenge to state and federal marijuana laws. The district court refused, explaining that Dee still lacked standing to challenge the federal law because there was no indication that federal authorities were threatening to prosecute him, and any case similarly would have to be dismissed on res judicata grounds. *Dee v. U.S.*, 241 F. Supp. 2d 50, 51 (D. Me.2003). The district court noted, however, that Dee had been found guilty of violating Maine's marijuana law, but a challenge to that law would be frivolous because there is no fundamental right to use marijuana, and

most jurisdictions' laws have been upheld because the drug represents a " threat to individual health and social welfare." *Id.* The case pending before this court, therefore, is the latest in a long line of nearly identical challenges that Dee has brought regarding the marijuana laws.

Here, Dee first moved for judgment on the pleadings, and the State filed a cross-motion for judgment on the pleadings. Dee then moved for summary judgment, and the State opposed the motion and moved to strike his statement of material facts. The State also seeks an injunction to prevent Dee from filing similar lawsuits in State court without obtaining permission of the Court. The Court will address each motion in turn.

## DISCUSSION

1.Motion and Cross-Motion on the Pleadings.

Maine law provides that "[a] fter the [pleading are closed but within such time as not to delay the trail, any party may move for judgment on the pleadings." M.R. Cic. P. 12(c). At that stage, the Court will assume that all factual allegations in the complaint are true" because such a motion is treated as a motion to dismiss for failure to state a claim". *Stevens v. Bouchard*, 532 A2d 1028, 1029-1030 (Me. 1987). But the Court is not required to credit any "legal conclusions " stated in the complaint. *Id.* At 1030.

The only facts relevant to the Court's decision are that Dee has been found guilty of violating Maine's civil possession statute in the past, and has waged a campaign against the marijuana laws, both

in and out of court, for over a decade. Other than these facts, which accepts as true, Dee's complaint contains much legal argument regarding the supposed unconstitutionality of the marijuana laws, which he claims violates his fundamental rights and right to due process. All his arguments, as noted above, have been rejected by Maine's state and federal courts, along with a vast majority of courts in other jurisdiction. See Kuromiya v. U.S., 37 F. Supp. 2d 717, 727 (D. Pa. 1999) (stating that "there is no fundamental right to use marijuana in any context"; U.S. v. Fogarty, 692F.2d 542, 547 (8th Cir. 1982). (stating that "there is no fundamental constitutional right to import, sell, or possess marijuana" and applying rational basis review). Simply put, usage of marijuana has not been recognizes as a fundamental constitutional right. Dee's challenge, therefore, is subjected only to rational review.

Enacting laws to prohibit the use, cultivation, and distribution of marijuana is well within province the legislature. *See State* v. *Brown*, 571 A.2d 816, 820 (Me. 1990) (It has long been settled law that the State possesses the " police power" to pass general regulatory laws promoting the pubic health, welfare, safety and morality"). Thus Dee's only recourse in his quest to change the marijuana laws is to present his cause before the legislature. This court cannot change the marijuana laws, and explicitly finds that there currently is no basis for invalidating them because the legislature had a rational basis for enacting them, and they do not encroach upon any fundamental right. Given this,

Dee is not entitled to a declaratory judgment in his favor, as there is no legal basis upon which he could recover. His motion for judgment on the pleadings is denied and the State's cross motion for judgment on the pleading is granted.

2. Motion for Summary Judgment & Motion to Strike Statement of Material Facts.

Dee has filed two motions for summary judgment on the basis that, as a matter of law, he is entitled to a declaratory judgment that Maine marijuana laws are unconstitutional. The state opposes the motions and also moves to strike his statement of material facts because it does not comply with M.R. Civ.P.56(h).[5] As this Court has granted the State's cross -motion for judgment on the pleadings, effectively ending this case, the motions for judgment and motion to strike are denied as moot.

3. Motion for an Injunction to Prevent Further Litigation.

In addition, the State moves for an injunction to prevent Dee from filing further lawsuits in state court. It argues that, given Dee's repeated, unsuccessful claims, he lacks good grounds required to support his pleadings or motions under M.R. Civ. P. 11(a). This court has the discretion to "enjoin a party from filing frivolous and vexatious lawsuits." *Spickler v. Key Bank of Me.*, 618 A.2d 204, 207 (Me. 1992). When seeking such an injunction, a

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[5] The court notes that on April 2, 2007, an amendment to Rule 56 went into effect that prohibits motion to strike. See M.R. Civ. P56

party must demonstrate that " a pattern of abusive and frivolous litigation" has occurred. *Id.* Such an injunction does not prevent a party from seeking redress in the courts when he or she has a valid claim, but rather serves as a " screening mechanism" to protect potential defendants from harassment brought on by baseless claims." *Id.*

Here, the State has satisfied its burden to show a pattern of frivolous and vexation suits. Over the span of twelve years, Dee has repeatedly and unsuccessfully attempted to litigate this issue in state and federal courts, described in detail above. At every turn, courts, have informed him that his claims have no legal merit and that the legislature, not the judiciary, is the proper forum for addressing this issue. Thus the Court enjoins him from filing further lawsuits in Maine courts to challenge the constitutionality of the State's civil and criminal marijuana laws without prior approval from the court.

The entry is:

Plaintiff's motion for judgment on the pleading is DENIED
Plaintiff's motions for summary judgment are DENIED
Defendant's motion to strike is DENIED.
Defendant's motion for judgment on the pleadings is GRANTED.
Judgment is entered in favor of Defendant.
Defendant's motion for injunctive relief is GRANTED.

Plaintiff hereby is ENJOINED from filing further lawsuits in Maine courts to challenge the marijuana laws without prior approval of the court.

The clerk shall incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Date June 25, 2007

/s/ Robert E. Crowley
Robert E. Crowley
Justice, Superior Court

## MOTION FOR RECONSIDERATION

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STATE OF MAINE SUPREME JUDICIAL COURT
Docket No.Cum-07-405
Decision No. Mem 07-208

MICHAEL J. DEE

V. ORDER

STATE OF MAINE

Upon motion for reconsideration of appellant, Michael J. Dee, the motion having been reviewed by the panel that decided the original appeal, it is ORDERED that the motion be , and it hereby is DENIED.

Dated: February 15, 2008

For the Court,
/s/ Mathew E. Pollack
Mathew E. Pollack
Clerk of the Law Court

[The correct statute in this complaint is 22 M.R.S.A. § 2383(1) not 22 M.R.S.A. § 2381(1) .

SUPERIOR COURT
of the STATE OF MAINE
Cumberland County, Portland, Maine

| | | |
|---|---|---|
| MICHAEL J. DEE | ) | |
| Plaintiff | ) | |
| | ) | |
| V. | ) | Civil Docket No. |
| | ) | PORSC- |
| STATE OF MAINE | ) | CV-2006-00707 |
| Defendant | ) | |

COMPLAINT FOR DECLARATORY RELIEF

I. PRELIMINARY STATEMENT

1. I, Michael J. Dee, an adult resident of Cumberland County, State of Maine, challenges the reasonableness of the Maine marijuana laws that have and continues to threaten to deprive plaintiff of his liberty and his property without due process of law. Plaintiff has standing to assert that the marijuana law which he was convicted of and the continued threat of criminal prosecution cannot be constitutional.

II. JURISDICTION AND VENUE

2. Jurisdiction, to review this case and

controversy, is conferred on this Court pursuant to Title 14 M.R.S.A.5953-54 Declaratory Judgment and by Amendments IV and V of the Constitution of the United States, made applicable to the State of Maine by the Amendment XIV.

## III. PARTIES

3. There still remains a substantial case between the State of Maine and the plaintiff having adverse legal interests, admitting of an immediate and definitive determination of the plaintiff's legal rights and the construction and validity of state "police power" to warrant the issuance of a declaratory judgment.

## IV. Facts

4. Marijuana is an object of a search warrant and subject to seizure by the State of Maine and present an actual case and controversy having adverse legal interests.

5. The Congress of the United States says "individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution". See Title 22 U.S.C.-6081. Marijuana is property. Therefore, the right to acquire and possess this property, describe as marijuana, is a fundamental right.

6. Plaintiff was twice summoned to court for possessing marijuana in the 1990s.

7. In 2000, Plaintiff was summoned, prosecuted and convicted by the State of Maine for violating Title 22 M.R.S.A. § 2381(1), possession of a useable

amount of marijuana in the form of a marijuana plant.

8. The Maine legislature has made it a criminal offence to grow a useable amount of marijuana. Title 17-A M.R.S.A § 1117(2)(D).

9. State of Maine can not justify criminal and civil laws with clear, unequivocal, and convincing evidence, beyond a reasonable doubt, that the plaintiff use of marijuana adversely affects the rights of other and is deleterious to plaintiff's health, a greater threat than the his use of alcohol and tobacco.

## V. CAUSES OF ACTION

10. Making it a "crime" to grow a usable amount of marijuana is an intrusive regulation that is an unjustifiable, unreasonable and unnecessary and must be deemed a violation of Amendments IV and V of the Constitution of the United States.

### A. VIOLATION OF AMENDMENT IV OF THE UNITED STATES CONSTITUTION

11. Plaintiff re allege and incorporates by reference herein the facts of paragraphs 1 through 9 above.

12. Plaintiff claims Title 22 M.R.S.A. § 2381(1) and Title 17-A M.R.S.A § 1117 (2)(D) are unjustified therefore unreasonable and contravenes the plaintiff's right to be secure in his person, his home, his papers and in his effects from unreasonable searches and seizures guaranteed by Amendment IV of the Constitution of the United States.

13. Being threatened with a search warrant, full custodial arrest, imprisonment and/or fines for privately growing and possessing a useable amount of marijuana is unreasonable government intrusion, is not a valid exercise of the "police power" and is in contravention of Amendment IV to the Constitution of the United States.

## B. VIOLATION OF AMENDMENT V OF THE UNITED STATES CONSTITUTION

14. Plaintiff re allege and incorporates by reference herein the facts of paragraphs 1 through 9 above.

15. Title 22 M.R.S.A. § 2381(1) (1992) and Title 17-A M.R.S.A § 1117(2)(D) are unjustified, unreasonable and unnecessary therefore has deprived and continues to threaten to deprive the plaintiff of his liberty and property without "due process of law" secured by Amendment V to the Constitution of the United States.

16. Plaintiff claims that these legislative enactments, Title 22 M.R.S.A. § 2381(1) (1992) and Title 17-A M.R.S.A § 1117(2)(D), are merely rationally related and can not be shown to be necessary to the accomplishment of some permissible state interest therefore violates "due process of law" secured by the Amendment V.

17. Not being able to tax the plaintiff for growing marijuana for private use has nothing to do with public health and safety, therefore violates the "due process of law" clause of Amendment V.

## Relief

WHEREFORE, Plaintiff asks this Court to enter a judgment:

A. To declare Maine Statues Title 22 M.R.S.A. § 2381(1) possession and Title 17-A M.R.S.A § 1117(2)(D) growing marijuana, are unjustified therefore unreasonable and contravened the plaintiff's Amendment IV right to be secure from unreasonable searches and seizures and therefore unconstitutional.

B. To declare the Maine Statues, Title 22 M.R.S.A. § 2381(1) (1992) and Title 17-A M.R.S.A § 1117(2)(D), are not narrowly drawn and are merely rationally related to the accomplishment of a permissible state policy and therefore violates "due process of law" of Amendment V and they are unconstitutional.

Dated: December 15, 2006

/s/ Michael J. Dee
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## III CONSTITUTIONAL PROVISIONS

### Constitution of the United States

### Amendment IV.

"The right of the people to be secure in their Persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

### Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."